IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4869 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUBARAKALI RIYASATALI ANSARI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR H.S.MULIA for Petitioner(s) : 1,
Mr.Apurva Dave, A.G.P for Respondent(s) : 1,2 & 3.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 05/12/2007

ORAL JUDGMENT

1. Heard Mr. H.S.Mulialearned Advocate appearing for the petitioner and Mr.L.R.Pujari,_learned AGP for the

respondents.

2. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 29-1-2007 passed by the Police Commissioner, Ahmedabad City, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act.

3. The petitioner-detenu is branded as a "dangerous person". The grounds of detention reveal that the detaining authority took into consideration three cases registered against the petitioner under Sections 394 and 114 of the Indian Penal Code for theft and sale of the stolen motorcycles, possession of deadly weapons and came to the conclusion that the petitioner was a habitual offender of committing the offence of theft. Relying upon the above material of theft cases and the statements of certain witness to the effect that the petitioner was administering threats to beating the innocent persons , detaning authority came to the conclusion that the petitioner was a dangerous person within the meaning of

PASA Act, engaged in illegal activities of committing thefts and harassing innocent citizens, and hence, the order of detention.

4. The order of detention has been challenged on various grounds, however, this petition is capable of being examined and disposed of on the sole ground as to whether there was cogent and credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

5. To reach to the subjective satisfaction that the dangerous activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property etc. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of beach of law and

order and the cases falling within the category of breach of public order.

6. In the present cases, the three criminal cases are registered against the petitioner under the Indian Penal Code for committing theft and sale of stolen vehicles. The offences of thefts as alleged against the petitioner in these criminal cases as per the papers of investigation t are under the Penal Statute of the country. Such activity of the petitioner can at the most be said to be breach of law and order, but not public order. For breach of law and order, the petitioner can be tried and punished if found guilty, but surely the acts of the petitioner do not constitute the offence affecting the even tempo of life of the community nor the activities revealed through the investigation papers indicate that the activities as alleged in these cases, society at large or section of the society or community or particular community was involved. Similar is the view even considering the statements of the witnesses. Reference in this connection may be had to the decision rendered in the case of Commissioner of Police Vs. C.Anita reported in [(2004) 7 SCC 467] paragraph 7 of the judgment wherein it has been observed that: “…….

stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infraction of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public order."

7. The facts of the present case is squarely covered by the above decision, and therefore, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal and valid, and therefore, the order of detention under challenge cannot be sustained.

8. In the result, the petition is allowed. The order of detention dated 29-1-2007 passed by the Police Commissioner, Ahmedabad City, against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(M.D.Sah,J.)

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